

Adopted	Rejected
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COMMITTEE REPORT

YES:	21
NO:	1

MR. SPEAKER:

*Your Committee on Ways and Means, to which was referred Senate Bill 67, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 11-8-1-5.6, AS ADDED BY P.L.273-1999,
- 4 SECTION 206, IS AMENDED TO READ AS FOLLOWS
- 5 [EFFECTIVE UPON PASSAGE]: Sec. 5.6. "Community transition
- 6 program commencement date" means the following:
- 7 (1) Sixty (60) days before an offender's expected release date, if
- 8 the most serious offense for which the person is committed is a
- 9 Class D felony.
- 10 (2) Ninety (90) days before an offender's expected release date, if
- 11 the most serious offense for which the person is committed is a
- 12 Class C felony **and one (1) or more of the offenses for which**
- 13 **the person was concurrently or consecutively sentenced does**
- 14 **not qualify as a nonviolent drug felony.**

(3) **One hundred twenty (120) days before an offender's expected release date, if the most serious offense for which the person is committed is a Class C felony and all of the offenses for which the person was concurrently or consecutively sentenced qualify as nonviolent drug felonies.**

(4) **One hundred twenty (120) days before an offender's expected release date, if the most serious offense for which the person is committed is a Class A or Class B felony and one (1) or more of the offenses for which the person was concurrently or consecutively sentenced does not qualify as a nonviolent drug felony.**

(5) **One hundred eighty (180) days before an offender's expected release date, if the most serious offense for which the person is committed is a Class A or Class B felony and all of the offenses for which the person was concurrently or consecutively sentenced qualify as nonviolent drug felonies.**

SECTION 2. IC 11-8-1-8.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.8. "Nonviolent drug felony" has the meaning set forth in IC 35-41-1-18.7.**

SECTION 3. IC 35-38-1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in **any combination of probation under IC 35-38-2, home detention under IC 35-38-2.5, or community corrections under IC 35-38-2.6** instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding IC 35-35-3-3(e), and after a hearing held under this section, a sentencing court may order the offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

SECTION 4. IC 35-38-2.6-1, AS AMENDED BY P.L.242-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

UPON PASSAGE]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of:

- (1) a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2 or IC 35-50-2-2.1; or
- (2) a misdemeanor whenever any part of the sentence may not be suspended.

(b) This chapter does not apply to persons convicted of any of the following:

- (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.
- (2) Offenses related to controlled substances listed in IC 35-38-1-7.1 for which a Class A or Class B felony is imposed **and that are not nonviolent drug felonies.**
- (3) Any of the felonies listed in IC 35-50-2-2(b)(4) **and that are not nonviolent drug felonies.**

SECTION 5. IC 35-38-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The department, after diagnosis and classification, shall:

- (1) determine the degree of security (maximum, medium, or minimum) to which a convicted person will be assigned;
- (2) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under IC 35-50-2-2(b)(3) due to a prior unrelated Class C or Class D felony **or a suspendible or nonsuspendible nonviolent drug offense**, determine whether the offender is an appropriate candidate for **any combination of probation under IC 35-38-2**, home detention under IC 35-38-2.5, **or community corrections under IC 35-38-2.6**;
- (3) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under:
 - (A) IC 35-50-2-2.1(a)(1)(B);
 - (B) IC 35-50-2-2.1(a)(1)(C); or
 - (C) IC 35-50-2-2.1(a)(2);
 determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;
- (4) for each offender:
 - (A) committed to the department because the offender has been convicted for the first time of a Class C or a Class D felony; and

1 (B) whose sentence may be suspended;
 2 determine whether the offender is an appropriate candidate for
 3 home detention under IC 35-38-2.5;
 4 **(5) for each offender convicted of a suspendible or**
 5 **nonsuspendible nonviolent drug offense, determine whether**
 6 **the offender is an appropriate candidate for any combination**
 7 **of probation under IC 35-38-2, home detention under**
 8 **IC 35-38-2.5, or community corrections under IC 35-38-2.6;**
 9 **(6) notify the trial court and prosecuting attorney if the degree of**
 10 **security assigned differs from the court's recommendations; and**
 11 **(6) (7) petition the sentencing court under IC 35-38-1-21 for**
 12 **review of the sentence of an offender who is not a habitual**
 13 **offender sentenced under IC 35-50-2-8 or IC 35-50-2-10; and**
 14 **who the department has determined under subdivision (2), or**
 15 **subdivision (3), (4), or (5) to be an appropriate candidate for any**
 16 **combination of probation, home detention, or community**
 17 **corrections.**

18 (b) The department may change the degree of security to which the
 19 person is assigned. However, if the person is changed to a lesser degree
 20 security during the first two (2) years of the commitment, the
 21 department shall notify the trial court and the prosecuting attorney not
 22 less than thirty (30) days before the effective date of the changed
 23 security assignment.

24 **(c) The department shall establish written directives for making**
 25 **determinations under subsection (a). The written guidelines**
 26 **required under this subsection are not rules subject to IC 4-22-2.**

27 SECTION 6. IC 35-41-1-3.5 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: **Sec. 3.5. "Episode of criminal conduct" has the**
 30 **meaning set forth in IC 35-50-1-2.**

31 SECTION 7. IC 35-41-1-18.7 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE UPON PASSAGE]: **Sec. 18.7. "Nonviolent drug**
 34 **felony" means a conviction for a felony under IC 16-42-19-27**
 35 **(legend drugs) or IC 35-48-4 (controlled substances) that was not**
 36 **part of an episode of criminal conduct that included a violent**
 37 **criminal act.**

38 SECTION 8. IC 35-41-1-29 IS ADDED TO THE INDIANA CODE

AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: **Sec. 29. "Violent criminal act" means an
offense in which the offender:**

- (1) proximately causes death, serious bodily injury, or bodily injury;**
- (2) threatens to cause death, serious bodily injury, or bodily injury;**
- (3) commits a sex offense (IC 35-42) or arson (IC 35-43-1-1);**
- (4) threatens to commit a sex offense (IC 35-42) or arson (IC 35-43-1-1);**
- (5) attempts to commit an act described in subdivisions (1) through (4); or**
- (6) engages in a conspiracy to commit an act described in subdivisions (1) through (4)."**

Page 2, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 10. IC 35-50-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8. (a) Except as otherwise provided in this section,** the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction, the person has accumulated two (2) prior unrelated felony convictions. The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

- (1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction;**
- (2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or**
- (3) the offense is a nonviolent drug felony.**

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

- (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and**
- (2) the offense for which the state seeks to have the person**

1 **sentenced as a habitual offender was committed after**
 2 **sentencing for the second prior unrelated felony conviction.**

3 ~~(d) However,~~ A conviction does not count for purposes of this
 4 ~~subsection;~~ **section as a prior unrelated felony conviction if:**

- 5 (1) ~~it the conviction~~ has been set aside; ~~or~~
 6 (2) ~~it the conviction~~ is one for which the person has been
 7 pardoned; ~~or~~
 8 (3) **the conviction was for a nonviolent drug felony.**

9 **(e) The requirements in subsection (b) do not apply to a prior**
 10 **unrelated felony conviction that is used to support a sentence as a**
 11 **habitual offender. A prior unrelated felony conviction may be used**
 12 **under this section to support a sentence as a habitual offender even**
 13 **if the sentence for the prior unrelated offense was enhanced for any**
 14 **reason, including an enhancement because the person had been**
 15 **convicted of another offense. However, a prior unrelated felony**
 16 **conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1**
 17 **(repealed), or IC 9-12-3-2 (repealed) may not be used to support a**
 18 **sentence as a habitual offender.**

19 ~~(e)~~ **(f)** If the person was convicted of the felony in a jury trial, the
 20 jury shall reconvene for the sentencing hearing. If the trial was to the
 21 court or the judgment was entered on a guilty plea, the court alone shall
 22 conduct the sentencing hearing under IC 35-38-1-3.

23 ~~(d)~~ **(g)** A person is a habitual offender if the jury (if the hearing is
 24 by jury) or the court (if the hearing is to the court alone) finds that the
 25 state has proved beyond a reasonable doubt that the person had
 26 accumulated two (2) prior unrelated felony convictions.

27 ~~(e)~~ **(h)** The court shall sentence a person found to be a habitual
 28 ~~criminal offender~~ **offender** to an additional fixed term that is not less than the
 29 presumptive sentence for the underlying offense nor more than three
 30 (3) times the presumptive sentence for the underlying offense.
 31 However, the additional sentence may not exceed thirty (30) years.

32 SECTION 11. IC 35-50-2-8.5 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) **Except as**
 34 **provided by this section,** the state may seek to have a person
 35 sentenced to life imprisonment without parole for any felony described
 36 in section 2(b)(4) of this chapter by alleging, on a page separate from
 37 the rest of the charging instrument, that the person has accumulated
 38 two (2) prior unrelated felony convictions described in section 2(b)(4)

1 of this chapter.

2 (b) **The state may not seek to have a person sentenced for a**
 3 **felony offense under this section if the offense is a nonviolent drug**
 4 **felony.**

5 (c) **A conviction does not count for purposes of this section as a**
 6 **prior unrelated felony conviction if the conviction is for a**
 7 **nonviolent drug felony.**

8 (d) If the person was convicted of the felony in a jury trial, the jury
 9 shall reconvene to hear evidence on the life imprisonment without
 10 parole allegation. If the person was convicted of the felony by trial to
 11 the court without a jury or if the judgment was entered to a guilty plea,
 12 the court alone shall hear evidence on the life imprisonment without
 13 parole allegation.

14 ~~(c)~~ (e) A person is subject to life imprisonment without parole if the
 15 jury (in a case tried by a jury) or the court (in a case tried by the court
 16 or on a judgment entered on a guilty plea) finds that the state has
 17 proved beyond a reasonable doubt that the person has accumulated two
 18 (2) prior unrelated convictions for offenses described in section 2(b)(4)
 19 of this chapter.

20 ~~(d)~~ (f) The court may sentence a person found to be subject to life
 21 imprisonment without parole under this section to life imprisonment
 22 without parole.

23 SECTION 12. IC 35-50-2-10 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) As used in
 25 this section:

26 (1) "Drug" means a drug or a controlled substance (as defined in
 27 IC 35-48-1).

28 (2) "Substance offense" means a Class A misdemeanor or a felony
 29 in which the possession, use, abuse, delivery, transportation, or
 30 manufacture of alcohol or drugs is a material element of the
 31 crime. The term includes an offense under IC 9-30-5 and an
 32 offense under IC 9-11-2 (before its repeal July 1, 1991).

33 (b) The state may seek to have a person sentenced as a habitual
 34 substance offender for any substance offense by alleging, on a page
 35 separate from the rest of the charging instrument, that the person has
 36 accumulated two (2) prior unrelated substance offense convictions.

37 (c) After a person has been convicted and sentenced for a substance
 38 offense committed after sentencing for a prior unrelated substance

offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction does not count for purposes of this subsection if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the substance offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing, under IC 35-38-1-3.

(e) A person is a habitual substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated substance offense convictions.

(f) The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

(1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or

(2) none of the prior unrelated substance offense convictions were part of an episode of criminal conduct that involved a violent criminal act;

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating or mitigating circumstances in IC 35-38-1-7.1 to:

(1) decide the issue of granting a reduction; or

(2) determine the number of years, if any, to be subtracted, under subsection (f).

SECTION 13. [EFFECTIVE UPON PASSAGE] (a) This subsection applies only to a person whose community transition

1 program commencement date is less than forty-five (45) days after
2 the effective date of this SECTION solely as a result of the
3 amendment of IC 11-8-1-5.6 by this act. The community transition
4 program commencement date for a person described by this
5 subsection is forty-five (45) days after the effective date of this
6 SECTION.

7 (b) The amendments to IC 35-38-1-21 and IC 35-38-3-5 made by
8 this act apply to an offender committed to the department of
9 correction regardless of when the offender was committed to the
10 department.

11 (c) Except as provided in subsection (d), IC 35-50-2-8, as
12 amended by this act, applies only if the offense for which the state
13 seeks to have the person sentenced as a habitual offender was
14 committed after the effective date of this SECTION.

15 (d) The amendments to IC 35-50-2-8(b)(3), IC 35-50-2-8(d)(3),
16 IC 35-50-2-8.5, and IC 35-50-2-10 made by this act apply only to
17 sentences imposed after the effective date of this SECTION."

18 Renumber all SECTIONS consecutively.

(Reference is to ESB 67 as printed March 22, 2001.)

and when so amended that said bill do pass.

Representative Bauer